

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION**

EARNELL HAILES,

Petitioner,

Case Number: 03-74144

v.

HONORABLE DENISE PAGE HOOD

FABIAN LAVIGNE,

Respondent.

---

**OPINION AND ORDER GRANTING “PETITIONER’S MOTION TO LIFT THE  
STAY HOLDING PETITION FOR WRIT OF HABEAS CORPUS IN ABEYANCE,”  
AND REQUIRING RESPONSIVE PLEADING**

Petitioner Earnell Hailes, who is presently confined at the Bellamy Creek Correctional Facility in Ionia, Michigan, filed a *pro se* petition for a writ of habeas corpus, pursuant to 28 U.S.C. § 2254, challenging the constitutionality of his conviction for third-degree criminal sexual conduct. Because Petitioner had failed to exhaust his state court remedies with respect to all but one of the claims presented in his habeas petition, the Court stayed the petition while instituting certain conditions under which Petitioner was required to proceed, and administratively closed the case. (Opinion and Order Holding Petition for Writ of Habeas Corpus in Abeyance and Administratively Closing Case, Docket No. 33, filed October 26, 2004).

The Court required Petitioner to file a motion for relief from judgment within sixty days from the date of the Court’s order staying the petition and further required Petitioner to file an amended petition within sixty days after the conclusion of state-court proceedings. The Michigan trial court denied Petitioner’s motion for relief from judgment on December 14, 2004. *People v. Hailes*, No. 99-13230 FH (Washtenaw County Circuit Court Dec. 14, 2004). Petitioner

filed an amended motion for relief from judgment, which was also denied. *People v. Hailes*, No. 99-13230 FH (Washtenaw County Circuit Court June 8, 2005). The Michigan Court of Appeals denied his application for leave to appeal on June 22, 2006, *People v. Hailes*, No. 267059 (Mich. Ct. App. June 22, 2006). The Michigan Supreme Court denied his application for leave to appeal on November 29, 2006. *People v. Hailes*, No. 131609 (Mich. Nov. 29, 2006). Petitioner signed his motion to lift the stay on January 27, 2007.

Although Petitioner does not state on what date he filed his motion for relief from judgment in the trial court, the trial court denied the motion on December 14, 2004, within sixty days of the Court's order staying the petition. The motion was, therefore, filed within the prescribed time period. Petitioner also has clearly complied with the second court-imposed condition, that is, he has sought leave to lift the stay within sixty days after the conclusion of state-court proceedings. Accordingly, the Court will permit Petitioner to reopen the habeas corpus proceeding.

Accordingly, it is **ORDERED** that Petitioner's "Motion to Lift the Stay Holding Petitioner's Petition for Writ of Habeas Corpus in Abeyance" is **GRANTED** and the Amended Petition attached to the motion is accepted for filing.

It is further **ORDERED** that Respondent file an answer responding to the allegations of the petition in accordance with Rule 5, Rules Governing Section 2254 Cases, within **sixty days** from the date of this Order.

It is further **ORDERED** that the Clerk of Court reopen this case for statistical purposes and serve a copy of the petition attached to Petitioner's motion and a copy of this Order on Respondent and on the Attorney General for the State of Michigan.

Dated: August 9, 2007

s/ DENISE PAGE HOOD  
DENISE PAGE HOOD  
UNITED STATES DISTRICT JUDGE

I hereby certify that a copy of the foregoing document was served upon counsel of record and Earnell Hailes, Reg. No. 324652, Bellamy Creek Correctional Facility, 1727 W. Bluewater Hwy., Ionia, MI 48846 on August 9, 2007, by electronic and/or ordinary mail.

S/William F. Lewis  
Case Manager